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THE
CHARGE OF
SIR FRANCIS
BACON KNIGHT, HIS
Maiesties Attourney generall,
touching *Duells*, vpon an informa-
tion in the Star-chamber against
Priest and Vright.

WITH
The Decree of the Star-chamber in
the same cause.

Printed for Robert Wilson, and are to be sold at Graies
Inne Gate, and in Paules Churchyard at the signe
of six Bibles. 1614.





THE
CHARGE OF SIR
FRANCIS BACON
Knight his Maiesties Attour-
ney generall, touching Duells,
vpon an information in the
*Star-chamber against
Priest and Wright.*

MY LORDS, I thought
it fit for my place, and
for these times to
bring to hearing be-
fore your Lord-ships
some cause touching
priuate *Duells*, to see if this Court can
doe any good to tame and reclaime
that euill which seemes vnbrideled.

And I could haue wished that I had met with some greater persons, as a subiect for your censure, both because it had bin more worthy of this presence, and also the better to haue shewed the resolution my selfe hath to proceed without respect of persons in this businesse: But finding this cause on foote in my predecessors time, and published and ready for hearing, I thought to loose no time, in a mischeefe that groweth euery day; and besides it passeth not amisse some-times in gouernment, that the greater sort be admonished by an example made in the meaner, and the dogge to be beaten before the lyon. Nay I should thinke (my Lords) that men of birth and quality will leaue the practise, when it begins to bee vilified, and come so lowe as to Barbers-surgeons and Butchers, and such base mechanicall persons.

And

And for the greatnesse of this presence, in which I take much comfort, both as I consider it in it selfe, and much more in respect it is by his Maiesties direction; I will supplie the meannesse of the perticular cause, by handling of the generall poynt; to the end that by occasion of this present cause, both my purpose of prosecution against *Duells*, and the opinion of the Court (without which I am nothing) for the censure of them may appeare, and thereby offenders in that kind may read their owne case, and know what they are to expect, which may serue for a warning vntill example may bee made in some greater person, which I doubt the times will but too soone afford.

Therefore before I come to the perticular whereof your Lordships are now to iudge, I thinke it time best spent to speake somewhat.

First,

First, of the nature and greatnesse of this mischeefe.

Secondly, of the causes, and remedies.

Thirdly, of the Iustice of the law of England, which some stick not to think defectiue in this matter.

Fourthly, of the capacity of this Court, where certainly the remedy of this mischeefe is best to be found.

And Fifthly, touching mine owne purpose and resolution, wherein I shall humbly craue your Lordshippes ayde and assistance.

For the mischeefe it selfe, it may please your Lord-shippes to take into your consideration that when reuenge is once extorted out of the Magistrates hand contrarie to Gods ordinance, *Mibi vindicta, ego retribuam*, and euery man shall beare the sword not to defend but to assaile, and priuate men be-
ginne

ginne once to presume to giue lawe to them-selues, and to right their owne wrongs, noe man can foresee the dangers and inconueniences that may arise and multiply there-vpon. It may cause suddaine stormes in Court, to the disturbance of his Maiestie, and vnfastie of his person. It may grow from quarrells, to banding, and from banding to trooping, and so to tumulte and commotion, from perticuler persons to dissention of families and aliances, yea to nationall quarrells, according to the infinite variety of accidents, which fall not vnder fore-sight; so that the State by this meanes shal be like to a distempered, and vnperfect body, continually subiect to inflamations and convulsions.

Besides, certainly, both in Diuinity and in Pollicie, *Offences of presumption are the greatest.* Other offences yeeld

B

and

and consent to the law *that it is good*, not daring to make defence, or to iustifie themselves; but this offence expressly giues the Law an affront, as if there were two lawes, one a kind of *Gowne-law*, and the other a law of *reputation*, as they tearme it, so that *Pauls & Westminster*, the Pulpit and the courts of iustice must giue place to the law (as the King speaketh in his proclamation) of *Ordinary* tables, and such reuerent assemblies; the year books and statute books must giue place to some French and Italian pamphlets, which handle the doctrine of *Duell*s, which if they be in the right, *transeamus ad illa*, lets receiue them, and not keepe the people in conflict and distraction betweene two lawes.

Againe (my Lords) it is a miserable effect, when young men, full of towardnesse and hope, such as the
Poets

II

Poets call *aurora filii*, sonnes of the morning, in whom the expectation and comfort of their friends consisteth, shall bee cast away and destroyed in such a vaine manner; but much more it is to bee deplored when so much noble and gentle blood shall be spilt vpon such follies, as if it were aduentured in the field in seruice of the king & realme, were able to make the *fortune* of a day, and to change the fortune of a kingdom. So as your Lordships see what a desperate euill this is; it troubleth peace, it disfurnisheth war, it bringeth calamity vpon priuate men, perill vpon the state, and contempt vpon the lawe.

Touching the causes of it; The first motiue no doubt is a false and erroneous imagination of honour and credit; and therefore the King, in his last Proclamation, doth most aptly and excellently

lently call them, *bewitching Duells*. For, if one iudge of it truely, it is noe better then a forcery that enchanteth the spirits of young men, that beare great myndes, with a false shew, *species falsa*; and a kind of satanicall illusion and apparition of honour; against religion, against lawe, against morall vertue, and against the presidents and examples of the best times, and valiantest Nations, as I shall tell you by and-by, when I shall shew you that the law of *England* is not alone in this poynt.

But then the seede of this mischeefe being such, it is nourished by vaine discourses, and greene and vnripe conceits, which neuerthelesse haue so preuayled, as though a man were staid and sober minded, and a right beleeuer touching the vanity and vnlawfulnesse of these *Duells*, yet the streame of vulgar opinion is such, as it imposeth a necessity

necessity vpon men of value to con-
 forme them-selues; or elle there is no
 liuing or looking vpon mens faces:
 So that we haue not to doe, in this case,
 so much with perticuler persons, as
 with vnfound and depraued opinions,
 like the dominations and spirits of the
 ayre, which the Scripture speaketh of.

Here-vnto may be added, that men
 haue almost lost the true notion and
 vnderstanding of *Fortitude* and *Valour*.
 For *Fortitude* distinguisheth of the
 grounds of quarrels, whether they bee
 iust; and not onely so, but whether they
 be worthy; and setteth a better price
 vpon mens liues then to bestow them
 idely, Nay it is weakenesse, and dise-
 steeme of a mans selfe, to put a mans
 life vpon such ledgier performances;
 A mans life is not to bee tryfled away,
 it is to bee offered vp and sacrificed to
 honorable seruices, publike merites,

good causes, and noble adventures. It is in expence of blood as it is in expence of mony, It is no liberality to make a profusion of mony vpon euery vaine occasion, nor noe more it is fortitude to make effusion of bloud except the cause bee of worth. And thus much for the causes of this euill.

For the remedies I hope some great and noble person will put his hand to this plough, and I wish that my labours of this day may be but fore-runners to the worke of a higher and better hand. But yet to deliuer my opinion, as may bee proper for this time and place; There bee foure things that I haue thought on, as the most effectuall for the repressing of this depraued custome of perticular Combats:

The first is, that there doe appeare and bee declared a constant and settled resolution in the State to abolish it. For
 this

this is a thing (my Lords) must goe
 downe at once, or not at all: For then
 euery perticular man will thinke him-
 selfe acquitted in his reputation, when
 he sees that the state takes it to heart, as
 an insult against the Kings power and
 authority, and thervpon hath absolute-
 ly resolved to maister it, like vnto that
 which was set downe in expresse words
 in the edict of CHARLES the ninth
 of France touching Duells, *That the
 King him-selfe tooke vpon him the honor
 of all that tooke them-selues griued or in-
 teressed for not hauing performed the
 Combat*; So must the State doe in this
 businellse, and in my Conscience there
 is none that is but of a reasonable so-
 ber disposition, bee hee neuer so vali-
 ant, { except it bee some furious person
 that is like a fire-worke) but will bee
 glad of it, when hee shall see the law
 and rule of State disinterest him of a
 vaine

vaine and vnnecessarie hazard.

Secondly, care must be taken that this euill bee noe more cockered, nor the humor of it fed; wherein I humbly pray your Lordships that I may speake my mind freely, and yet be vnderstood aright. The proceedings of the great and noble Commillioners Marshall, I honor and reverence much, & of them I speake not in any sort; But I say the compounding of quarrells, which is o-ther-wise in vse, by priuate noble men and gentlemen, it is so punctuall, and hath such reference and respect vnto the receyued conceipts, whats before hand, and whats behinde hand, and I cannot tel what, as without all questi-on it doth, in a fashion, countenance and authorise this praetise of *Duell*s, as if it had in it some-what of right.

Thirdly, I must acknowledge that
 ✕ I learned out of the Kings last procla-
 ination

mation the most prudent and best applied remedy for this offence (if it shall please his Maiestie to vse it) that the wit of man can deuise. This offence (my Lords) is grounded vpon a false concept of honour , and therefore it would bee punished in the same kinde, *In eo quis rectissime plectitur in quo peccat.* The fountaine of honour is the King, and his aspect, and the accesse to his person continueth honour in life, and to be banished from his presence is one of the greatest eclipses of honour that can bee; if his Maiestie shall be pleased that when this Court shall censure any of these offences in persons of eminent quality, to adde this out of his owne power and discipline, that these persons shall bee banished and excluded from his Court for certaine yeares, and the Courts of his Queene and Prince, I thinke there is noe man that hath any

good blood in him, will commit an act that shall cast him into that darkenesse, that hee may not behold his Soueraignes face.

+ Lastly, and that which more properly concerneth this Court, wee see (my Lords) the root of this offence is stubborn: For it despiseth death, which is the vtmost of punishments, and it were a iust, but a miserable seuerity, to execute the law without all remission or mercy, where the case proueth capital. And yet the late seuerity in France was more, where by a kind of Marshall law established by ordinance of the King and Parliament, the party that had slaine another was presently had to the gibbet, in so much as gentlemen of great quality were hanged, theyr wounds bleeding, least a naturall death should preuent the example of iustice. But (my Lords) the course
which

which wee shall take is of farre greater lenity, and yet of no lesse efficacy; which is to punish, in this Court, all the middle acts and proceedings which which tend to the *Duell*, (which I will enumerate to you anon) and so to hew and vexe the roote in the branches, which no doubt, in the end, will kill the roote, and yet preuent the extremity of law.

Now for the law of *England*, I see it excepted to, though ignorantly in two poyntes;

The one, that it should make no difference betweene an insidious and foule murther, and the killing of a man vppon fayre termes, as they now call it.

The other, that the law hath not prouided sufficient punishment, and reparations for contumely of words, as the *Lie* and the like.

But these are noe better then childish nouelties against the diuine lawe, and against all lawes in effect, and against the examples of all the brauest and most vertuous Nations of the World.

For first for the law of God, there is neuer to be found any difference made in homicide, but betweene homicide voluntary and involuntary, which we tearme misadventure. And for the case of misadventure it selfe, there were Citties of refuge; so that the offender was put to his flight, & that flight was subiect to accident, whether the reuenger of blood should ouer-take him before he had gotten sanctuary or noe; X It is true that our law hath made a more subtile distinction betweene the will enflamed, and the wil aduised, between manslaughter in heat, and murder vpon prepenesed malice, or could blood,

as

as the souldiers call it, an indulgence not vnfit for a chollericke and warlike Nation, for it is true, *Ira furor breuis.* a man in fury is not him-selfe. This priueledge of passion the ancient Roman law restrayned, but to a Case, that was, if the husband, tooke the adulterer in the manner; to that rage and prouocation onely it gaue way, that it was an homicide was iustificable. But for a difference to bee made in case of killing and destroying man, vpon a forethought purpose, betweene fowle and fayre, and as it were betweene single murther and vyed murther, it is but a monstrous childe of this later age, and there is noe shadow of it in any law Diuine or humane. Onely it is true, I finde in the Scripture that **C A I N E** inticed his brother into the field, and slew him trecherously, But **L A M E D** vaunted of his man-hood, *that he would*

kill a young man and if it were in his hurt : So as I see no difference betweene an insidious murther , and a brauing, or presumtuuous murther, but the difference betweene *Cain* and *Lamed*.

As for examples in Ciuill states all memory doth consent that *Grecia* and *Rome* werethe most valiant and generous Nations of the world , and that which is more to bee noted they were free estates, and not vnder a Monarchy, whereby a man would thinke it a great deale the more reason that perticular persons should haue righted themselves; and yet they had not this practife of *Duells* , nor any thing that bare shew thereof ; and sure they would haue had it if there had bin any vertue in it. Nay as he sairh, *fas est et, ab hoste doceri*, it is memorable that is reported by a Councillor and Ambassador

bassador of the Emperors, touching the censure of the Turkes, of these *Duells*; There was a Combate of this kind, performed by two persons of quality of the Turkes, wherein one of them was slaine, the other party was conuented before the Councell of *Bassaes*; the manner of the reprehension was in these words; *How durst you undertake to fight one with the other? are there not Christians enough to kill? did you not know that whether of you should bee slaine the losse would bee the great Seigneours?* So as wee may see that the most warlike Nations, whither generous or Barbarous hath euer despised this wherein now men glory.

It is true (my Lords) that I find Combats of two natures authorised how iustly I will not dispute, as to the later of them.

The

The one when vpon the approches of armies in the face one of the other perticuler persons haue made challenges for triall of valors in the field, vpon the publike quarrell.

This the *Romanes* called, *pugna per-prouocationem*. And this was neuer, but either betweene the Generalls themselves, who were absolute, or betweene perticulers, by license of the generalls, neuer vpon priuate authority. So you see *DAVID* asked leaue when hee fought with *GOLIAH*, and *IOAB* when the armies were met, gaue leaue, and said, *let the young men play before vs*, and of this kind was that famous example in the wars of *Naples*, between twelue *Spaniards* and twelue *Italians*, where the *Italians* bare away the victory; besides other infinite like examples worthy and laudable, some-times by singles, some-times by numbers.

The

The second Combate is a iudiciall tryall of right, where the right is obscure, introduced by the *Gothes* and the Northerne Nation, but more anciently entertained in *Spaine*; and this yet remains in some cases, as a Diuine lotte of battayle, though controuerted by Diuines touching the lawfulness of it, So that a wise writer saith, *Taliter pugnantēs videntur tentare Deum, quia hoc volunt vt Deus ostendat et faciat miraculum, vt iustam causam habens victor efficiatur, quod sēpē contrā accidit.* But howsoeuer it bee, this kind of fight taketh his warrant from law. Nay the French themselues whence this folly seemeth chiefly to haue flowne neuer had it but onely in practise and tolleration, but neuer as authorized by law; And yet now of late they haue beene fayne to purge their folly with extreame rigour, insomuch as many

Gentlemen left betweene death and life in the *Duells* (as I spake before) were hastned to hanging with their wounds bleeding. For the State found it had beene neglected so long, as nothing could be thought cruelty which tended to the putting of it downe.

As for the second defect, pretended in our law, that it hath provided no remedy for *lies* and *fillippes*, it may receiue like answer; It would haue beene thought a madnes amongst the ancient law-giuers, to haue set a punishment vppon the *lye giuen*, which in effect is but a word of deniall, a negatiue of anothers saying. Any law-giuer, if hee had beene asked the question, would haue made *Solons* answer, *that he had not ordained any punishment for it, because he neuer imagined the world would haue beene so fantasticall as to take it so highly.* The Ciuilians they dispute
whe.

whether an action of *Iniury* lie for it, and rather resolve the contrary. And *Francis* the first of *France*, who first set on & stamped this disgrace so deepe, is taxed by the iudgment of all wise writers, for beginning the vanity of it; for it was hee that when hee had himselfe giuen the lie and defie to the Emperor, to make it currant in the world, said in a solemne assembly, *That hee was no honest man that would beare the lye*, which was the fountaine of this new learning.

As for words of *reproach* and *contumely* (whereof the lye was esteemed none) it is not credible (but that the Orations themselves are extant) what extreame and exquisite reproaches were tossed vp and downe in the Senate of *Rome*, and the places of assembly, and the like in *Grecia*, and yet no man tooke himselfe

fowled by them, but tooke them but for breath, and the stile of an enemy, and eyther despised them or returned them, but no blood spilt about them.

So of euery touch or light blow of the person, they are not in themselves considerable, saue that they haue got vppon them the stampe of a disgrace, which maketh these light things passe for great matter. The law of England, and all lawes hold these degrees of In-
 iury to the person; *slander*, *battery*, *mayme*, and *death*: And if there be extraordinary circumstances of despight and contumely, as in case of libells and bastanadoes, and the like, this Court taketh them in hand and punisheth them exemplarly. But for this apprehension of a disgrace, that a fillippe to the person should bee a mortall wound to the reputation, it were good that men did hearken vnto the saying
 of

of *Consaluo* the great and famous
 commaunder, that was wont to say;
A Gentlemans honor should bee, De tela
crassiore, of a good strong warppe or
 webbe that euery little thing should
 not catch in it, when as now it seemes
 they are but of copwebbe lawne, or
 such light stuffe, which certainly is
 weakenesse, and not true greatnesse of
 mind, but like a sicke mans body, that
 is so tender that it feeles euery thing.
 And so much in maintenance and de-
 monstration of the wisdome and ius-
 tice of the law of the land.

For the capacity of this Court, I take
 this to bee a ground infallible, that
wheresoeuer an offence is capital, or matter
of felony, if it be acted, there the combinati-
on, or practise, tending to that offence is pu-
nishable in this Court, as a high misdemenor.
 So practise to impoison, though it
 took no effect, way-laying to murder

though it tooke no effect, and the like, haue beene adiudged haynous misdemeanors punishable in this Court. Nay, inceptions and preparations in inferior crimes (that are not capitall) as suborning and preparing of witnesses, that were neuer deposed, or deposed nothing materiall, haue likewise beene censured in this Court, as appeareth by the decree in *Garnons* case.

Why? then the *Maior* proposition being such, the *Minor* cannot bee denied: for euery appoyntment of the field is but combination and plotting of murther, let them guilde it how they list, they shall neuer haue fairer termes of me in place of iustice. Then the conclusion followeth, that it is a case fit for the censure of this Court. And of this there be presidents in the very poynt of Challenge.

It was the case of *Wharton*, Plaintife
against

against *Ellekar* and *Acklam* Defendants, where *Acklam* being a follower of *Elleckars*, was censured for carying a challeng from *Ellecker* to *Wharton*, though the challenge was not put in writing, but deliuered onely by word of message, and there are words in the decree, that such challenges are to the subuersion of *Gouernment*.

Thesethings are well knowne, and therefore I needed not so much to haue insisted vppon them, but that in this Case I would be thought not to inno-uate any thing of mine owne head, but to follow the former presidents of the Court, though I meane to doe it more thoroughly, because the time requires it more.

Therefore now to come to that which concerneth my part, I say, that by the fauour of the King and the Court, I will prosecute in this Court in the Cases following. If:

If any man shall appoint the field, though the fight be not acted or performed.

If any man shall send any Challenge in wrighting, or any message of Challenge.

If any man carry or deliuer any writing or message of Challenge.

If any man shall accept or returne a Challenge.

If any man shall accept to bee a second in a Challenge, of either side.

y If any man shall depart the Realme with intention and agreement to performe the fight beyond the seas.

If any man shall reuiue a quarrel by any scandalous bruites or wrightings contrary to a former Proclamation published by his Maiesty in that behalfe.

Nay I heare there be some Counsell learned of Duells, that tell yong men when

when they are before hand, and when they are otherwise, and thereby incense and incite them to the Duell, and make an art of it; I hope I shall meeete with some of them too, and I am sure (my Lords) this course of preuenting Duels in nipping them in the budde, is fuller of clemency and prouidence then the suffering them to goe on, and hanging men with their wounds bleeding, as they did in France.

To conclude, I haue some petitions to make, first, to your Lordshipp, my Lord Chancellor, that in case I be aduertised of a purpose in any to goe beyond the sea to fight, I may haue granted his Maiesties writ of *Ne exeat regnum* to stoppe him, for this Giant bestrideth the sea, and I would rake and snare him by the foote on this side, for the combination and plotting is on this side though it should be acted

E

beyond

beyond sea. And your Lordship said notably the last time I made a motion in this busines, that a man may be as well, *fur de se* as *feto de se*, if he steale out of the Realme for a bad purpose, and for the satisfiing of the wordes of the writte, no man will doubt but he doth *machinari contra coronam* (as the wordes of the writte be) that seketh to murder a subiect; for that is euer, *contra coronam et dignitatem*. I haue also a sute to your Lordships all in general, that for Iustice sake, and for true honors sake, honor of Religion, Law, and the King our Maister against this fond and false disguise or puppetrey of honor, I may in my profecutiō (which it is like enough may some times stirr coales (which I esteeme not for my particular, but as it may hinder the good seruice) I may (I say) be countenanced and assisted from your Lordships: Lastly I haue a
 petition

petition to the nobleſſe and gentlemen of England, that they would learne to eſteeme themſelues at a juſt price. *Non hos quaſitum munus in uſus*, their blood is not to be ſpilt like water or a vile thing, therefore that they would reſt perſwaded there cannot be a forme of honor, except it be vpon a worthy matter. But for this, *Ipsi viderint*, I am reſolued. And thus much for the generall; now to the preſent caſe.

THE

position to the nobles and gentlemen
of England, that they would consent
to certain conditions as a full price. Now
for the first time in our history, their blood
is not to be spilt like water or a vile
thing, the price that they would not
sell for less than their country, for a form of
honour, except it be upon a worthy
manner. But for this, the price is
not to be sold. And thus much for the
generally; now to the present case.

THE



THE DECREE
OF THE STAR-
CHAMBER IN THE
SAME CAUSE.

*In camera stellatâ coram concilio ibidem
26^o. die Januarij anno undecimo
Iacobi regis.*

The Prefence.

THO: LO: Ellesmere GEOR: LO: Arch-
LORD Chancellor of bishop of Canter-
England. bury.

HEN: Earl of North: IOHN LO: Bishop of
L: Priuie Seale London.

CHARLES: Earle of SIR EDVVARD COOKE
Notting: Lo: high Knight, L: chiefe Ius-
Admiral of England. tice of England.

THO:


THO: Earle of Suffolke Sir HEN: Hobart
 Lord Chamberlaine. knight Lord chiefe
 ED: Lord Zouche. Iustice of the com-
 mon-pleas.

WILLIAM: Lo. Knolles, Treasurer of the
 Household.

EDWARD Lo. Wotton Controwler.

IOH: Lo: Stanhop, Vicechamberlaine .

Sir IULIVS *Cesar* knight, Chancellor of the
 Exchequer:

 His day was heard and de-
 bated at large, the severall
 matters of Informations
 here exhibited by Sir *Fran-*
cis Bacon Knight, his Maiesties Attour-
 ney Generall, th'one against *William*
Priest Gentleman, for writing and
 sending a Letter of challenge, toge-
 ther with a stick which should be the
 length of the weapon, And th'other
 against *Richard Wright* Esquire for car-
 rying

rying and deliuering the said letter and
 sticke vnto the partie challenged, and
 for other contemptuous and insolent
 behauiour vsed before the Iustices of
 Peace in *Surrey* at their Sessions, before
 whom he was conuented. Vpon the
 opening of which cause his Highnes
 said Attourney generall did first giue
 his reason to the Court why in a case
 which he intended should be a leading
 case, for the repressing of so great a
 mischiefe in the commonwealth, and
 concerning an offence which raigneth
 chiefly amongst persons of honor and
 qualitie, he should begin with a cause
 which had passed betweene so meane
 persons as the defendants seemed to
 be; which he said was done because
 hee found this cause ready published
 and in so growing an euill, he thought
 good to lose no time, wherevnto he ad-
 ded, that it was not amisse sometimes

to

to beate the dogge, before the Lyon, saying further, that hee thought it would be some motiue for persons of birth & countenance to leaue it, when they saw it was taken vp by base and mechanicall fellowes, but concluded; That hee resolued to proceed without respect of persons for the time to come, and for the present to supply the meannesse of this particular Case by insisting the longer vpon the generall point.

Wherein he did first expresse vnto the Court, at large, the greatnes & dangerous consequence of this presumptuous offence, which extorted reuenge out of the Magistrates hand, and gaue boldnes to priuate men to bee lawe-gi- uers to themselues; the rather because it is an offence that doth iustifie it selfe against the lawe, and plainly giues the law an affront; describing also the
 miserable

miserable effect which it draweth vpon priuate families by cutting off yong men, otherwise of good hope, and cheifely the losse of the King and Common-wealth, by the casting away of much good blood, which being spent in the field vpon occasion of seruice were able to continew the renowne, which this Kingdome hath obtained in all ages, of being esteemed victorious.

Secondly his Maiesties said Atturney generall did discourse touching the causes and remedies of this mischief, that preuaileth so in these times, shewing the ground thereof to bee a false and erroneous imagination of honor and credit, according to the terme which was giuen vnto those *Duells*, by a former proclamation of his Maiesties, which called them *bewitching Duells*, for that it is no better
 then

then a kind of sorcery, which en-
chanteth the spirits of young men,
which beare great minds with a
shew of honor in that which is no
honor indeed, beeing against re-
ligion, law, morall vertue, and
against the presidents and exam-
ples of the best times, and valian-
test Nations of the world, which
though they excelled for prowesse
and millitary vertue in a publique
quarrell, yet knew not what these
private *Duells* ment: saying further,
that there was too much way and
countenance giuen vnto these *Du-
ells*, by the course that is held by
noble men and gentle-men in com-
pounding of quarrells, who vse to
stand too punctually vppon con-
ceipts of satisfactions and distinc-
tions, what is before hand and what
behind hand, which doe but feed
the

the humor; Adding likewise that it was no fortitude to shew vallour in a quarrell, except there were a iust and worthy ground of the quarrell; but that it was weakenesse to sette a mans life at so meane a rate as to bestowe it vppon trifling occasions, which ought to bee rather offered vp and sacrificed to honourable seruices, publique merrits, good causes, and noble aduentures. And as concerning the Remedies, hee concluded: That the onely way was, that the State would declare a constant and settled resolution to master and put downe this presumption in priuate men, of what-soeuer degree of righting their owne wrongs, and this to doe at once; For that then euery perticuler man would think himselfe acquitted in his reputation, when that he shal see that the State

takes his honor into their hands, and standeth betweene him and any Interest, or preiudice, which he might receiue in his reputation for obeying; wherevnto he added likewise, that the wisest and mildest way to suppress these *Duells* was rather to punish in this Court all the acts of preparation, which did in any wise tend to the *Duells*, (as this of Challenges and the like) and so to prevent the Capitall punishment, and to vexe the roote in the branches, then to suffer them to run on to the execution, and then to punish them Capitally, after the manner of *France*, where of late times Gentlemen of great quality, that had killed others in *Duell*, were carried to the Gibbet with their woundes bleeding, least a naturall death should keepe them from the example of Iustice.

Thirdly

Thirdly his Maiesties said Attur-
 ney generall did by many reasons,
 which hee brought and alledged,
 free the Law of *England* from cer-
 taine vaine and childish exceptions,
 which are taken by these *Duellists*:
 The one, because the Law makes
 noe difference in punishment be-
 tweene an insidious and foule mur-
 ther, and the killing of a man vp-
 pon Challenge and faire tearmes, as
 they call it, Th'other for that the
 Law hath not prouided sufficient
 punishment, and reparation for con-
 tumelie of wordes, as the *lye*, and
 the like: wherein his Maiesties said
 Atturney generall did shew, by many
 waighty arguments and examples:
 That the Law of *England* did consent
 with the Law of *God*, and the Law of
Nations in both those pointes, and
 that this distinction in murther be-

tweene foule and fayre , and this grounding of mortall quarrells vpon vnciuill and reproachfull words, or the like disgraces, was neuer authorised by any law, or ancient examples, but it is a late vanity crept in from the practise of the *French*, who themselues since haue beene so weary of it, as they haue beene forced to put it downe with all seuerity.

Fourthly, his Maiesties said Attourney Generall did prooue vnto the Court by rules of law and presidents; that this Court hath capacity to punish sending and accepting of Challenges, though they were neuer acted nor executed; taking for a ground infallible, that wheresoeuer an offence is capitall or matter of felony, if it be acted and performed, there the conspiracy, combination, or practise

rife tending to the same offence is punishable as a high misdemeanor, although they neuer were performed. And therefore that practise to impoyson though it tooke no effect, and the like, haue bene punished in this Court: and cyted the president in *Garnons* case, wherein a crime of a much inferiour nature, the suborning and preparing of witnesses though they neuer were deposed, or deposed nothing materiall, was censured in this Court, whereupon hee concluded, that forasmuch as euery appoyntment of the field is in law but a combination of plotting of a murther, howsoeuer men might guilde it: That therefore it was a case fit for the censure of this Court; and therein he vouched a president in the very point, that in a case betwene *Wharton* plantife and *Elerker* and

Acklam

Acklam, defendants. *Acklam* beeing a follower of *Elerker* had carried a challenge vnto *Wharton*, and although it were by word of mouth, and not by writing, yet it was seuerely sentenced by the Court; the Decree hauing wordes, that such Challenges doe tend to the subuersion of gouernment: And therefore his Maiesties Attorney willed the standerds by to take notice that it was noe innouation that he brought in, but a proceeding, according to former presidents of the Court, although he purposed to follow it more thoroughly then had been done euer heeretofore, because the times did more & more require it. Lastly, his Maiesties said Attorney generall did declare and publish to the Court in seuerall Articles his purpose and resolution in what cases hee did intend to prosecute offences of that nature in
 this

this Court, That is to say, That if any man shall appoynt the field, although the fight bee not acted or performed. If any man shall send any challenge in writing, or message of challenge: If any man shall carry or deliuer any writing or message of challenge. If any man shall accept or returne a challenge, If any man shall accept to bee a second in a challenge of eyther part: If any man shall depart the Realme with intention and agreement to performe the fight beyond the seas: If any man shall reuiue a quarrell by any scandalous bruites or writings cōtrary to a former Proclamation, published by his Maiesty in that behalfe, that in all these cases his Maiesties Atturney generall, in discharge of his duety by the fauour and assistance of his Maiesty and the Court, would bring the offenders

of what state or degree soeuer to the iustice of this Court, leauing the Lords Comissioners Marshall to the more exact remedies, adding further, that hee heard there were certaine Councell learned of *Duells*, that tell yong men when they are before hand and when they are otherwise, and did incense and incite them to the *Duell*, and made an art of it, who likewise should not be forgotten, and so concluded with two petitions, the one in perticuler to the Lord Chancellor, that in case aduertisement were giuen of a purpose in any to goe beyond the seas to fight, there might bee granted his Maiesties writte of *Né exeat regnum* against him: And the other to the Lords in generall, that hee might bee assisted and countenanced in this seruice.

After which opening and declarati-
on

on of the generall cause, his Maiesties
 said Attorney did proceed to set forth
 the proofes of this perticuler chal-
 lence and offence now in hand and
 brought to the iudgment and censure
 of this honorable Court; wherevpon
 it appeared to this honorable Court
 by the confession of the said defendant
Priest himselfe, that hee hauing recei-
 ued some wrong and disgrace at the
 hands of one *Hutchest*, did there-
 upon in reuenge thereof writ a letter to
 the said *Hutchest* containing a chal-
 lence to fight with him at single rapier,
 which letter the said *Priest* did deliuer
 to the said defendant *Wright*, together
 with a sticke containing the length of
 the rapier, wherewith the said *Priest*
 ment to performe the fight; wher-
 vpon the said *Wright* did deliuer the
 said letter to the said *Hutchest*,
 and did read the same vnto him

and after the reading thereof did also deliuer to the said *Hutchest* the saide sticke, saying, that the same was the length of the weapon mentioned in the saide Letter. But the saide *Hutchest*, (dutifully respecting the preseruation of his Maiesties peace) did refuse the saide Challeng, wherby noe further mischeefe did ensue thereupon. This honorable Court, and all the honorable presence this day sitting, vpon graue and mature deliberation, pondering the qulality of these offences, they generally approued the spech and obseruations of his Maiesties saide Attourney generall, and highly commended his great care and good seruice in bringing a cause of this nature to publique punishment and example, and in professing a constant purpose to goe on in the like course with others; letting him knowe, that hee
 might

might expect from the Court all concurrence and assistance in so good a worke. And therevpon the Courte did by their severall opinions and sentences declare how much it imported the peace and prosperous estate of his Maiestie and his kingdome to nippe this practise and offence of *Duells* in the head, which now did ouerspread and grow vniuersall, euen among meane persons, and was not onely entertayned in practise and custome, but was framed into a kinde of Art and Preceptes; so that according to the saying of the Scripture, *Mischeefe is imagined like a lawe*. And the Court with one consent did declare their opinions. That by the ancient law of the land all Inceptions, preparations, & combinatiōs to execute vnlawful acts, though they neuer be performed as they be not to be

punished capitally, except it bee in
 case of treason, and some other per-
 ticuler cases of statute law: So yet they
 are punishable as misdemeanors and
 contempts: And that this Court was
 proper for offences of such nature,
 specially in this case, where the bra-
 uery and insolency of the times are
 such as the ordinary Magistrates and
 Iustices, that are trusted with the pre-
 seruation of the Peace, are not able
 to master and repress these offences,
 which were by the Court at large set
 forth, to bee not onely against the
 law of God, to whom, and his sub-
 stitutes all reuenge belongeth as part
 of his prerogatiue, but also against
 the oath and duety of euery subiect
 vnto his Maiesty, for that the sub-
 iect doth sweare vnto him, by the an-
 cient law, allegiance of life and mem-
 ber, whereby it is plainly inferred that
 the

the subiect hath no disposing power
ouer himselfe of life and member to
bee spent or ventured according to his
owne passions and fancies, in so much
as the very practise of Chiualry in
Iusts and Turneys, which are but ima-
ges of martiall actions, appeare by an-
cient presidents not to be lawfull with-
out the Kings lycence obtained. The
Court also noted, that these priuate
Duells or Combats were of another na-
ture from the Combats which haue
beene allowed by the law aswell of this
land as of other nations for the tryall
of rightes or appeales. For that those
Combats receiued rection & authori-
ty from the law, wheras these contra-
riwise spring only from the vnbrided
humors of priuate men. And as for the
pretence of honor, the Court much
mistaking the confusion of degrees
which is growne of late (euery man
assu-

assuming vnto himself the tearme and
 attribute of honor) did vtterly reiect
 and condemne the opinion that the
 priuate *Duell*, in any person whatso-
 euer, had any groundes of honor, as
 well because nothing can be honora-
 ble that is not lawfull, and that it is
 no magnanimity or greatnes of mind,
 but a swelling & tumor of the minde,
 where there faileth a right and sound
 Iudgement; as also for that it was ra-
 ther iustly to be esteemed a weaknes,
 and a conscience of smale value in a
 mans selfe to be deiected, so with a
 word or trifling disgrace as to thinke
 there is no recure of it, but by hazard of
 life, whereas true honour in persons
 that know their owne, worth is not of
 any such brittle substance but of a more
 strong composition. And finally, the
 Court shewing a firme and setled re-
 solution to proccede with all seuerity
 against

against these *Duells* gave warning to all young noble-men and gentlemen that they should not expect the like connyuence or tolleration as formerly haue beene, but that iustice should haue a full passage without protection or interruption; Adding that after a straight inhibition, whosocuer should attempt a challenge or combatte, in case where the other party was restrayned to answere him (as now all good subiects are) did by their owne principles receiue the dishonor and disgrace vppon himselfe. And for the present cause, The Court hath ordered, adiudged, and decreed, that the said *William Priest*, and *Richard Wright*, bee committed to the prison of the *Fleete*, and the said *Priest* to pay five hundred pound, and the said *Wright* five hundred

H markes

markes for their severall Fines to
 his Maiesties vse. And to the end
 that some more publique example
 may bee made heereof amongst his
 Maiesties people, The Court hath
 further ordered and decreed, That
 the said *Priest* and *Wright* shall at the
 next Assises to bee holden in the
 County of *Surrey* publicquely in face
 of the Court, the Iudges sitting, ac-
 knowledge their high contempt and
 offence against God, his Maiesty,
 and his lawes, and shew themselues
 penitent for the same. Moreouer
 the wisdom of this high and ho-
 nourable Court thought it meete
 and necessary that all sorts of his
 Maiesties subiects should vnder-
 stand and take notice of that which
 hath beene said and handled this day
 touching this matter, aswell by his
 highnesse Attorney generall, as by
 the

the Lords, Iudges, touching the law in such cases. And therefore the Court hath enioyned Maister Atturney to haue speciall care to the penning of this decree, for the setting forth in the same summarily the matters and reasons which haue beene opened and deliuered by the Court touching the same, and neuerthe-lesse also at some time conuenient to publish the perticulers of his speeche and declaration, as very meete and worthy to bee remembered, and made known to the world, as these times are: And this decree, being in such sort carefully drawne & penned, the whole Court thought it meete, and so haue ordered and decreed, that the same bee not onely read and published at the next Assises for *Surrey* at such time as the said *Priest* and *Wright* are to acknow-

ledge their offences as aforesaid; But that the same be likewise published and made knowne in all Shires of this Kingdome. And to that end the Iustices of Assize are required by this honorable Court to cause this decree to bee solemnly read and published in all the places and sittings of their seuerall Circuits, and in the greatest assembly, to the end that all his Maiesties subiects may take knowledge and vnderstand the opinion of this honorable Court in this case, and in what measure, his Maiesty, and this honorable Court purposeth to punish such as shall fall into the like contempt and offences hereafter. Lastly this honorable Court, much approuing that which the right honorable Sir *Edward Coke* knight, Lord Chiefe Iustice of *England* did now deliuer touching the law

law in this case of *Dwells*, hath enioyned his Lordship to report the same in print, as hee hath formerly done diuers other Cases, that, such as vnderstand not the law in that behalfe, and all others may better direct themselves, and prevent the danger thereof hereafter.

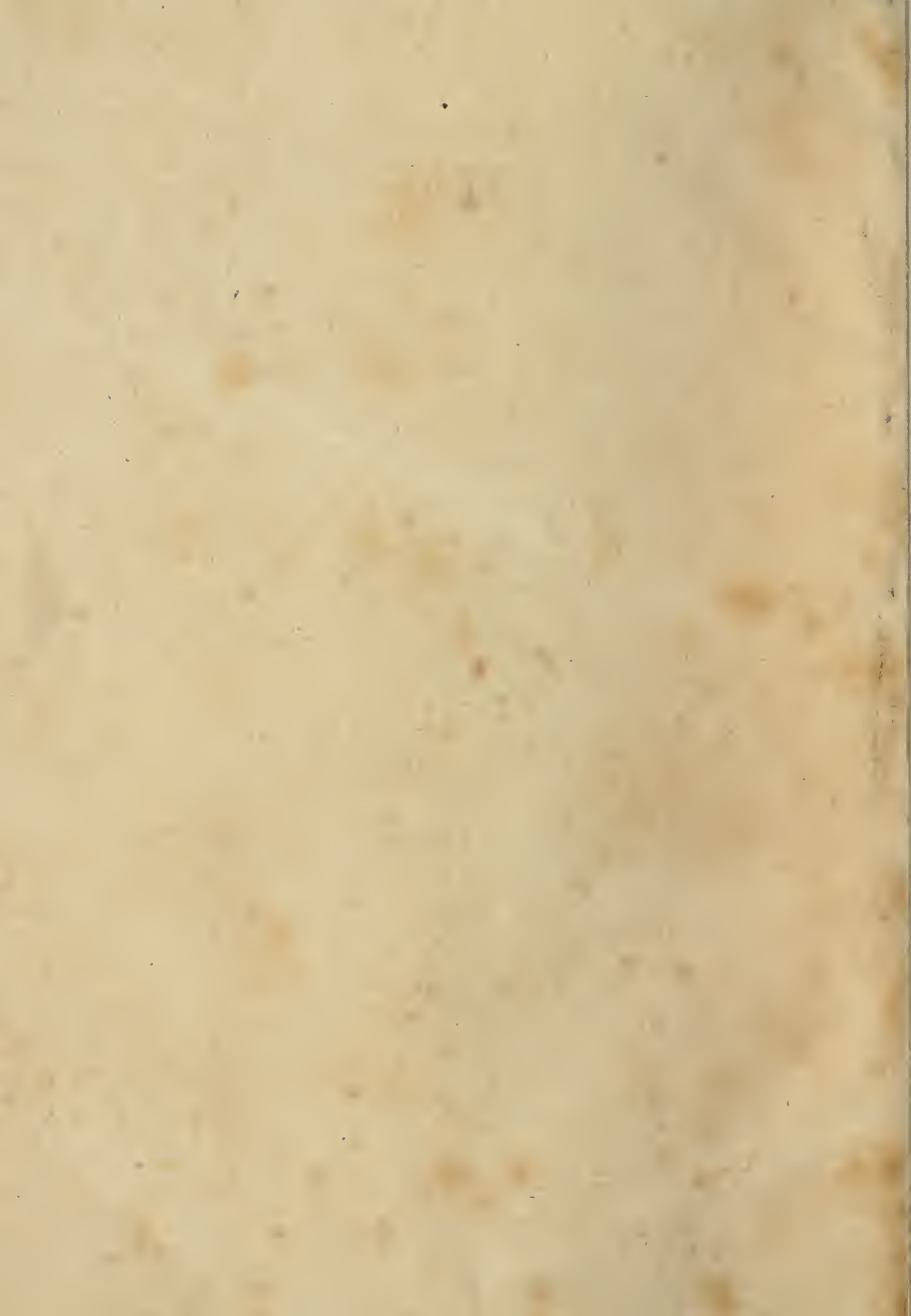
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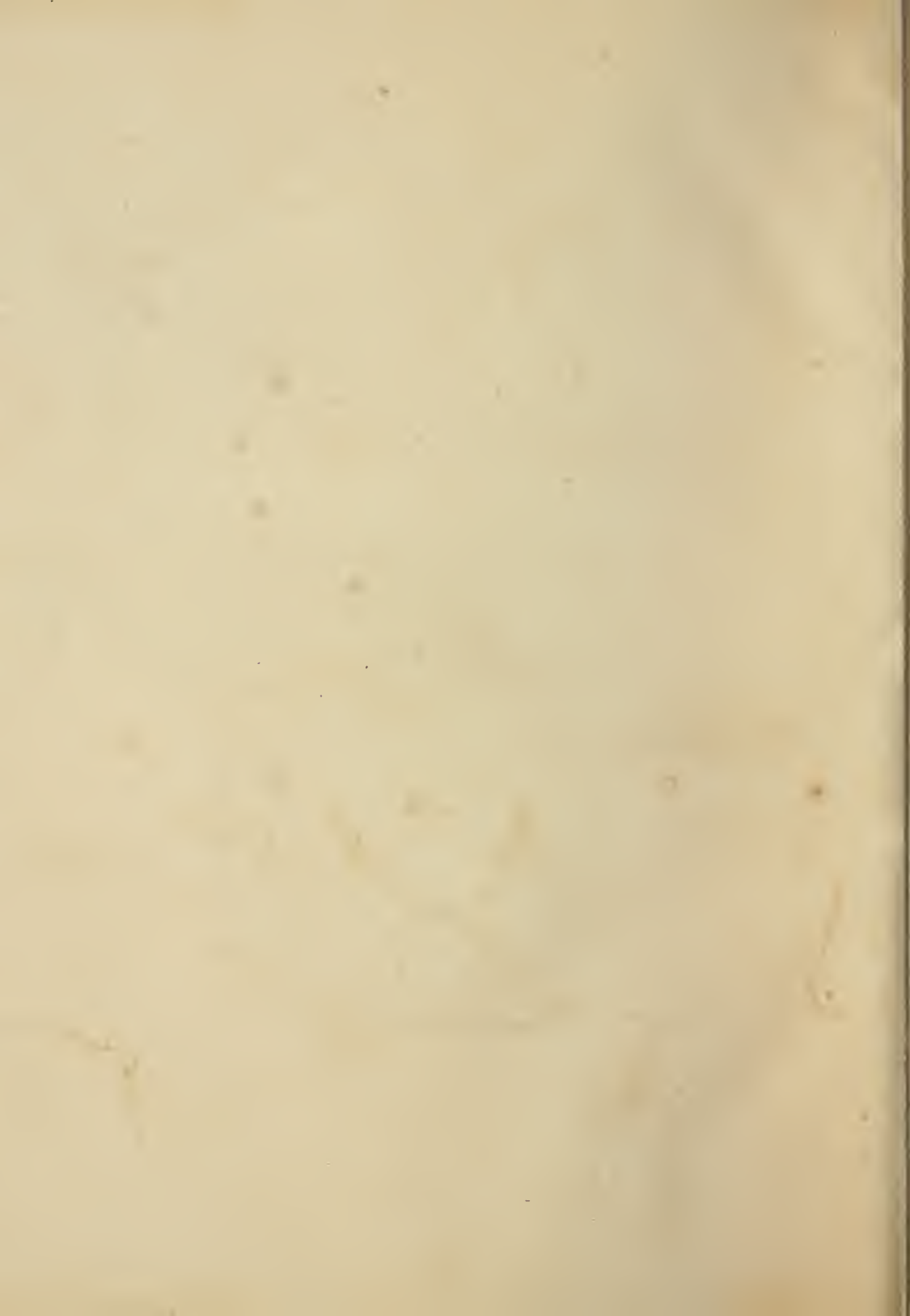
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April
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